DR. CHENG SEK TOH v. SIM TENG CHEW.

[App. Jurisdiction (Brown, J.) January 20, 1947]

Crown Lands Encroachment Ordinance (Cap. 114) Section 2 (1) — Necessity for taking sworn evidence in hearing and determining information.

This was an appeal from an Order of a Magistrate made by him under Section 3 (1) of the Crown Lands Encroachment Ordinance (Cap. 114). It appeared that no evidence was taken nor was the Temporary Occupation Licence put in as an Exhibit.

Held, that in hearing and determining the sworn information of the Commissioner of Lands or of any Land Revenue Officer or other public officer under Section 3 (1) of the Crown Lands Encroachment Ordinance it is necessary to hear sworn evidence which is subject to cross-examination.

S. C. Goho for the Appellant.

C. H. Butterfield (Crown Counsel) for the Respondent.

Brown, J. : — This is an appeal from the learned Magistrate against an Order made by him under section 3 (1) of the Crown Lands Encroachment Ordinance (Cap. 114). No evidence was taken, nor was the Temporary Occupation Licence (upon which the Respondent relies) put in as an exhibit. In place of the evidence certain notes of the learned Magistrate, containing a history of the case, appear at pages 8-10 of the record.

Section 3 (1) of Cap. 114 provides that upon the sworn information of a Commissioner of Lands or of any Land Revenue Officer or other public officer, "the Court shall proceed in a summary way in the presence of the parties . . . . to hear and determine such information." I rule that the expression "in a summary way" does not dispense with the ordinary rules of procedure, whether for a criminal or a civil matter, of hearing sworn evidence which is subject to cross-examination. Indeed I do not know in what other manner the sworn information can be "heard and determined."

The case must go back to the learned Magistrate with an Order to take the evidence and to hear and determine the matter in accordance with the ordinary rules of procedure. I may add that I hope that arrangements will be made to comply with this Order with the least possible delay.

I further Order that the deposit of $150/- paid by the appellant in respect of this appeal be refunded.

No order for costs.

Order Accordingly.

YEO HOW SAM v. CHOP BEE HUAT.

[Orig. Civil Juris. (Brown, J.) February 15, 1947]

Evidence — Admissibility of official letter to show on what date the island of Borneo was completely occupied by the Japanese Forces in 1942.

In this case the defendants sought to tender in evidence as part of their case a letter over the signature of the Secretary to the Special Commissioner for South East Asia. This letter purported to be a reply to a letter from the defendants' solicitors enquiring on what date the Island of Borneo was completely occupied by the Japanese Forces in 1942.

Held, (1) that the procedure under which Certificates of public officers are receivable in evidence of the fact or facts contained therein is an exception to the ordinary rules of evidence and procedure and should not be extended; (2) that such certificates are properly admitted where the matters concerned are so peculiarly within the knowledge of the particular Government department concerned as to make the certificates conclusive evidence of those matters; (3) that the document in this case cannot be given this conclusive character and is inadmissible in evidence.

Case referred to :—

(1) *Duff Development Company v. Government of Kelantan* (1924) A.C. 797.

CIVIL SUIT.

N. N. Leicester for the Plaintiff.

K. W. Hatchard for the Defendant.

Brown, J. : — The document which Mr. Hatchard seeks to tender in evidence as part of the defendants' case is a letter over the signature of the Secretary to the Special Commissioner for South East Asia. This letter purports to be a reply to a letter from the defendants' solicitors enquiring on what date the Island of Borneo was completely occupied by the Japanese Forces in the year 1942.

Mr. Hatchard argues that this letter is admissible in the same way, and for the same reason, as the official letter from the Colonial Office regarding the status of the Kelantan Government was admitted in the *Duff Development Co. case*[1]. He contends that it is admissible by its bare production without any further proof, for the reason that it is a matter which is peculiarly within the knowledge of the department of Government concerned — in this case the Foreign Office, whose local representative (he says) is the Special Commissioner.

While it is true that there are instances where the certificates of public officers, whether under the hand of the public officer himself or in the form of an official letter from his department, are receivable as evidence of the fact or facts therein contained, I do not think that this is one of them. And I think that if I admitted this document I should be acting contrary to principle and unsupported by authority. A statement in an official letter from the Colonial Office that Kelantan was an independent State; a statement made on the instructions of the Foreign Office regarding the status of a person claiming immunity from judicial process on the ground of diplomatic privilege; and a statement by an official of the Foreign Office that a foreign minister's name has been removed from the diplomatic list — these are matters which are so peculiarly within the knowledge of the particular Government department concerned that they are admitted as evidence because of their conclusiveness. But I cannot give to this document the same conclusive character.

If every fact which is within the knowledge, or which is believed to be within the knowledge, of a Government department were to be proveable by a certificate from the department, in substitution for sworn testimony taken in accordance with the ordinary rules of evidence and procedure (including the right of the opposite party to cross-examine), it seems to me that this procedure, which has hitherto been rigidly restricted, would be so extended as to become not the rare exception but the established rule; and it would lead to much uncertainty and confusion.

I hold that the document is inadmissible. I may add that my ruling would be the same if, instead of the document being signed by the Secretary of the Special Commissioner for South East Asia in Singapore it had been signed by the Secretary of State for Foreign Affairs under the address of the Foreign Office in London.

Ruling Accordingly.